THE YAZOO CITY WHIG
AND POLITICAL REGISTER.

J. A. STEVENS, Editor & Proprietor. YAZOO CITY, (MI.) FRIDAY, JULY 14, 1843. VOL. 8, No. 1.—Whole No. 356.

Insolvent Notice.

THE undersigned having been appointed at the February Term, 1843, of the Probate Court of Yazoo county, Commissioners of Insolvency upon the Estate of Bethavien Young. dec'd, will meet on the first Saturday of each month at the Office of James Hayden, in Yazoo city, to audit claims against said estate.

JAMES HAYDEN,
GEO. B. WILKINSON,
NATHANIEL PERRY.

Yazoo city, March 17, 1843. 36-tf.

NOTICE.

LETTERS of Administration de bonis non were granted me at the March Term, 1843, of the Probate Court of Yazoo county, on the Estate of Nathaniel N. Hurst, dec'd,—All persons indebted to the late firm of Whitehead & Hurst, will come forward and make settlement and payment; likewise all persons indebted to said Hurst individually.—Those having claims against Whitehead & Hurst, and N. N. Hurst individually, will present them duly authenticated or they will be forever barred.

JOAB R. RICHARDS,
Adm'r de bonis non of N. N. Hurst, dec'd.

Benton, April 7, 1843. 39-6t

CIRCULAR

To the Planters and Merchants of the Cotton growing region on the Mississippi.

THE undersigned has established a new Cotton Press in this city, in the spacious Fire Proof Sheds of James Erwin, Esq., immediately above the angle buildings in the Second Municipality, where he has ample room to store ten thousand bales of Cotton under cover. He offers to the Planters and Merchants to receive their Cotton free of Storage, hoping to remunerate himself therefor by the superior advantage of his compressing machine; he binds himself to perform as well and as cheap as other presses in the city. He therefore respectfully requests those who wish to save the expense of storage, to instruct their agents to deposit their cotton in his press.

JOHN BALDWIN.

New Orleans, Feb 2, 1843. 33-3t.

Prospectus of

EVERY YOUTH'S GAZETTE

SECOND VOL.—PRICE REDUCED.

The largest, handsomest, and cheapest Periodical for the Young, in the U. States: published every fortnight at the office of the New World, and every number embellished with elegant Engravings.

WE enter upon the second volume of EVERY YOUTH'S GAZETTE on the first of January, 1843, in the full confidence of exceeding, in an eminent degree, our previous efforts in making one of the most instructive, useful and entertaining periodicals, for the young of both sexes, ever before established in this country. One great feature in the 'Youth's Gazette,' in the ensuing vol., will be the reprinting of all the popular works for children, by the most eminent English authors, such as Mrs. Sherwood, Mary Howitt, Emily Taylor, Matia Hack, Miss Strickland, Miss Wakefield and many others, all which will be embellished with BEAUTIFUL ENGRAVINGS ON WOOD, many of them executed in London, and are not only exceedingly valuable as illustrations of the various subjects, but interesting as works of art. In fact, in pictorial attractions, no periodical of the kind can compare with this—no expense being spared to make the YOUTH'S GAZETTE for the young what the New World is for adults, the most interesting and comprehensive paper in the country.

In all respects, its contents—embracing Natural History, Geology, Botany, Voyages, Travels, Adventures, Tales, Sermons, &c—will be adapted to the understandings of Youth from five to fifteen years of age; and no article is published which is not pervaded with a pure moral tone.

Parents and Guardians of Youth can in no way so powerfully aid in the improvement in useful knowledge and morality of their children and wards, as to subscribe for this journal. Its great object is to make learning attractive rather than a task, and inspire a love for reading which shall tend to the formation of habits of virtue, industry and usefulness. Every father of a family should take the Gazette for his children, as the cheapest schoomaster which can be employed for their mental and moral culture—and the great favour with which the work has been received during its first volume, justifies the publisher in the most liberal outlays to enrish its pages for the second—which will render it worthy of a more extensive circulation than it has hitherto enjoyed, large as it has already been.

TERMS:

One Dollar and Fifty Cents a Year, or Five Copies for Five Dollars.

The YOUTH'S GAZETTE is published every two weeks, on beautiful paper, and contains sixteen quarto pages, of three columns each. Single subscriptions, $1 50: two copies for $2 50; five copies for $5, and $1 for each additional name.

All Postmasters are authorized and solicited to act as agents, from whom One Dollar a year in all cases will be received in full payment for subscription, thus leaving them a commission of 33 per cent. on each. Remittances must be on a specie-paying bank, and sent free of postage.

☞ Copies of the first volume will be sent to all new subscribers, for $1, additional, which will thus render the series complete. Specimen numbers sent to all who wish to examine the work before subscribing, if the request is made free of postage. Address

J. WINCHESTER, 30 Ann-st. N. Y.

December, 1842.

Great Enterprise!

UNITED STATES SATURDAY POST AND CHRONICLE.

A Family Newspaper of the Mamoth Class.

THE proprietors of the Saturday Evening Post have purchased the entire establishment of the "SATURDAY CHRONICLE," and also that of the "UNITED STATES" weekly newspapers, the immense subscription list of which concerns they have united with the heavy list of the SATURDAY POST, a family newspaper of 22 years standing, and now issue the three in one under the title of **"The United States Saturday Post and Chronicle."** The present number will commence

THE TWENTY FOURTH VOLUME,

and with the superior facilities now possessed by the proprietors, they can afford to publish a larger, handsomer, and better paper for the money than can be had elsewhere. The editorial department will be under the control of several gentlemen of high literary standing and ability, and will be conducted with a degree of vigor and spirit that must render the paper one of the very best ever issued in the country. The great size of the sheet will enable the proprietors to give a greater variety of original and selected matter than can be found in cotemporary sheets. The matter will in many respects be of a different quality. The design of the proprietors being, to make a

First rate Family Newspaper

in every particular, calculated to meet the wishes of the people from one end of the Union to the other, the following are the points to which they invite attention, as embracing the character of the sheet.

THE GREAT SIZE.

It is a sheet of the largest class—is printed on fair, clear type, with fine white paper, and contains more reading matter than any weekly published.

Popular Tales.

It is devoted to the highest grade of light Literature, each number containg three or four chaste Original and Selected TALES; which, while they shall interest the young, shall at the same time point a moral. It also contains much good, and never any bad POETRY. A copious compound of well-told Anecdote, Rich Humor, Pointed Wit, Just Satire, and Sentiment the most touching. It contains also, the greatest variety of Original Tales, Sea Sketches, Essays, Poetry, Songs, Charades, besides the latest and best selections from the American and English Magazines, and all other fountains of choice Original Literature.

In fine, the POST, upon which the concern is founded, has been conceded every where to be the very first newspaper in the country in the quality and quantity of its *Original Tales, Essays, Poetry and other matter.*

[Here follows a list of names of about fifty eminent writers, who are regular contributors to the paper, which we have not room to insert.]

Original Stories appear in every number of the paper, with Original articles *on all subjects.*

PUBLIC LECTURES.

A portion of its columns will be devoted during the Lecture Season, to SCIENTIFIC LECTURES carefully reported at length—a feature possessed by no othar weekly paper—*by one of the best Reporters in the United States.* Hence, subscribers remote can have all the advantage of these highly popular discourses with but little cost. The great size of the paper also enables us to give all important Congressional Proceedings at length, and all reports and other public documents in full, together with occasional Congressional Speeches in full.

THE FARMERS.

It is intended to make the paper one of great interest to the Farmer, by giving the Reports of the different Agricultural Associations; the new inventions; late experiments in tilling, and able papers from every source entitled to confidence; so that the Agricultural portion of the community will find in its columns, without entrenching upon other matter, all that is desirable to know, without the expense of a seperate journal.

As a Newspaper.

As a weekly newspaper, it is believed that the "UNITED STATES SATURDAY POST" is not equalled by any weekly literary paper now existing. It contains a full and well digested account of every matter of news up to the hour of printing. This is a great desideratum to those who take only a single weekly paper, and which means less extensive than those connected with the establishment cannot accomplish. The number of persons employed, and the steam-power engaged in the publication of his paper, altogether surpasses that of any other of a similar character.

In short, the UNITED STATES SATURDAY POST is considered in all respects equal, if not superior, to any of its class, while in price it is far *cheaper.* Instead of *three* dollars a year, which is the price of the two mammoth newspapers of New York, and the two of Boston, the subscription of the "UNITED STATES SATURDAY POST" is **only Two Dollars a year,** per single copy. GEO. R. GRAHAM & CO.

No. 98 Chesnut Street, Philadelphia, Pa.

FALL AND WINTER GOODS.

THE undersigned would respectfully inform their friends and the public, that they have just received a new and splendid Stock of

Fall and Winter Goods,

consisting of DRY-GOODS of every description, Hats, Boots, Shoes, &c., &c., which they will sell on the most reasonable terms.

ULLMAN & HAUSMAN.

Nov. 11, 1842. 18tf.

Blue Back Money!

WE have a few hundred dollars of the Commercial Bank of Natchez Checks for sale. FUQUA & WILSON.

BLANK DECLARATIONS.

For sale at this OFFICE.

Important Decision.

"At the cost of no little trouble we lay before our readers to-day the very important decision of the High Court of Errors and Appeals in regard to the powers of banking corporations. We have no room for comments."

Mississippian, 18th May.

Commercial Bank Manchester, vs John T. Nolan, et. al. } Jan. term 1843.

The Commercial bank of Manchester, on the 2d day of January 1839, discounted a note for the defendants for $3,000, payable 12 months after date, and paid the amount less 8 per cent which was reserved for the interest. At the same time the Bank, by contract, received from the defendant Nolan fifty bales of cotton, which were shipped to Liverpool for him, with the understanding that he was to be credited with the nett proceeds of the sales of the cotton including the foreign exchange, at the city of New York. There does not appear to have been any contract as to domestic exchange, other than that which may be inferred from the circular issued by the bank, a short time previously, by which it proposed "to make loans predicated upon cotton of fair quality, taking the owner's note at not longer time than 12 months, deducting discount for the time, placing to the credit of the owner the premium of foreign exchange current in New York, at the date of sales as well as interest upon nett proceeds of cotton sold, until settlement; shipments to be made to Liverpool."

There was placed upon the note of the defendant a credit for the amount of proceeds of sale according to the above proposition, but no premium for domestic exchange; that is, for the difference of value in Money in New York and in Manchester, where the bank was situated. The settlement was made in December 1839. There is no proof of the rate of exchange at the time of settlement, but there is evidence to show that during the year, the rate fluctuated from par for specie, to 12 per cent for Mississippi currency, the time of depression of our currency and of increased rate of exchange being greatest, as the year 1839 drew to a close. In 1840 the general suspension of the banks took place. It was in proof that the bank regarded the domestic exchange, if in favor of New York at the time when the return of sales of cotton were received as no part of the discount, and as no more than compensation for its trouble and expense.

Upon this state of facts the court below, charged the jury, amongst other things "that if the bank in this instance took more than the interest allowed by its charter, by contract either express or implied, no matter in what form it may have been taken, that then the contract sued on is usurious, and is totally void." A verdict was found for the defendants and judgment entered in their favor.

Two points have been presented to us in argument growing out of this charge; first whether the contract sued on is affected with usury. 2dly if so whether it is wholly void, or only to the extent of the interest:

In regard to the first question the existence of usury in the transaction, it is not explained in the charge, with sufficient precision, what is meant by usury. It is certainly true in regard to this point, that the form of the contract, or the division of the contract into distinct parts, can make no difference. The law will not permit any device to defeat its provisions, where the consummation of usury is really intended, and the departure from the ordinary form of contract is meant merely as a veil to disguise the real features of the transaction.—But it is well settled that in a case like this, where besides the contract of loan, there is also a contract by way of pledge, or mortgage, or collateral security as accessary to the payment of the debt, which is the principal, that some fair and just compensation for labor, trouble, and expense about the accessary thing, may be legally stipulated for, Comyn on usury 46, Trotter vs Curtis, 19 Johns 190, 2 Cowan, 769. This stipulation however must not be resorted to as a cover for usury. The matter then becomes a question of fact, whether the taking of the cotton under an agreement to account for its nett proceeds in New York, without the addition of domestic exchange, was a means adopted to conceal the usurious intention, or was a fair contract, the bank taking the risk of profit in that way, as a compensation for its trouble. Again, in contracts of loan, if there is a hazard that the creditor may receive less than his principal, it is no usury.—8 Leigh 248, 1 J. J. Marshall 596. But the hazard must not be merely colorable, Pike vs. Lidwell 5 Esp. Rep. 162. "In this case if at the time of payment, the rate of exchange had been in favor of Manchester against New York, the bank would have been loser to that extent. In the fluctuations of the balance of trade, mutations in the rate of exchange between two points, are by no means unfrequent. If it was not fixed and certain that the bank would make in this matter of exchange, and if in any contingency not so remote as to make it a mere disguise for unlawful gain, a part of the principle might be lost, the agreement was not usurious. Both these principles should have been explained in the charge to the Jury, and their verdict might have rested on correct grounds.

The contract in this instance in regard to the cotton is not illegal, according to any principle, which can be brought to bear upon it. One of the attributes of a corporation at common law is, "that it may take and grant property, contract obligations, sue and be sued by its corporate name, in the same manner as an individual," 2 Kent 278, Angel & Ames 59. Unless specially restrained by their charter or by statute, they have these powers neither limited as to objects, nor circumscribed as to quanity, lb. 104.—These remarks apply solely to the acquisition and disposition of property; corporate powers in other respects are more strictly construed. The charter of this bank in that particular is very ample, "it is made capable of buying, receiving and holding property and estate of whatsoever nature, and the same to alien and dispose of at pleasure."—Terms more comprehensible could scarcely be employed. It is, moreover, a powerful necessarily incident to every bank of discount, that it should be permitted to secure its loans in any manner not prohibited by its charter, or some public statute. Without such power the privilege of banking would be a poor boon. 2 Ala. 472. It will scarcely be doubted that the bank might take a deed of trust or mortgage on slaves or other personalty to secure a due to it. The almost daily occurrence of such acts, is a strong evidence of their legality, and such contracts have been often enforced in the courts of the country. There is but one restriction in the charter of this bank, that which is contained in the ninth section, by which it is enacted "that the company shall have power to secure their loans, for periods of more than a year by pledges of real estate so pledged." With this single exception there is no prohibition upon it, to secure its loans in any way it may deem advisable, "every corporation, unless expressly forbidden, has by implication of law, the power to do such acts as are essential to its existence, or necessary to enable it to perform its functions," Banks & Hines vs the bank of the State of Alabama, 2 Ala. Rep. 472, 14 Poters 129. Surely nothing is more essential to the existence of a bank for any useful purpose, than a power to secure the payment of its debts. A bank having by its charter, power to convey real estate, may encumber it by mortgage. Jackson vs. Brown, 5 Wen. 590; it follows as a consequence, that a power to purchase, includes a power to accept a mortgage. This precise point has been before the supreme courts of two of our sister States, in cases in which the charters of the banks contained, so far as the reports show, no such clause as that already cited in this case; yet both courts upon general principles, in the absence of positive prohibition, held the contracts valid, 2 Ala. 472 as above; Deloach vs Real Estate Bank Arkansas et al; 18 Louisiana 447.

Having shown that there is nothing in the agreement as to the cotton which affects the validity of this contract, and that the charge of the court in regard to what constitutes usury was too broad and general. I come next to enquire, whether if the existence of usury be established, the contract thereby becomes wholly void.

The loan in this case was for 12 months, and the only clause in the charter which can affect it is in these words, "the rate of discount which said company is authorised to take on paper having 12 months or longer to run, is hereby declared to be 8 per cent. per annum." There is no prohibition to take more, nor penelty for excess in this particular. Our statute upon the subject of interest in substance enacts, "that no person or persons whomsoever, shall take directly or indirectly for any contract, more than 8 dollars for the forbearance or giving day of payment of one hundred dollars for one year, and if more be taken or received in, or by, any such contract, no interest or premium whatever shall be allowed or received, but the principal sum only." From the terms of this act it is manifest that if a natural person had been the plaintiff in this case, the charge would be usurious. Is a different principle applicable to a bank, or in other words, are banks included in the words person or persons under the general provisions of the statute? In the various definitions, by legal writers, of the term corporation, it is often called a person, in Angel & Ames page 7 it is said, that when any number of persons are consolidated and united into a corporation they are then considered as one *person;* it is often called an artificial person; Angel & Ames 58, 2 Ran. 472. Chief Justice Marshall calls it an *artificial being*, and in 2 Peters 323, Bank of Kentucky vs Wister et al, it is called a metaphysical person. It has been frequent by the subject of adjudication, whether corporations were embraced in the general term citizens, persons, inhabitants, and the decisions hold that they are: 2 Coke Inst. 703 People vs Utica Ins. Co. 15 Johns 332, Mott vs Hicks, 1 Cowan 543, Maine Bank vs Butts 9 Mass. 48. Bank of the Valley vs Stribing 5 Ran: 11 Wh. 412, 12 Peters 135, 13 Peters 588, 2 Hill 267. This list might be much extended and the cases so far as I have seen, all hold that corporations are included in the word persons in a general statute. It has been repeatedly so decided in reference to the statutes of usury, in cases where banks were resisting as well as seeking that application of the law. The cases are very numerous where the usuary laws have been applied to the transactions of Banks sub silentio, without question on either side. Bank Burlington vs Durhee 1 Ver: 401; lb. 480, 12 Pit. 586, U. S. Bank vs Wagner et al 9 Peters, 1 Peters 43.

An act of incorporation never attempts to embody all rules and principles which are to govern the institution which it creates. Of necessity it has reference to the existing laws of the State in which it is passed. Those laws apply as forcibly to an artificial person at the time of its creation, as to a natural person at birth. The one is governed by them except so far as exempted by its charter, just as the other is clothed with them at the first moment of existence. A charter containing provisions contrary to the constitution, would be void, precisely as any other legislative act. This shows that the general laws in force at the time of its creation bear upon it, except so far as its charter may take it out of their influence.—Angell & Ames 142, McCarty vs. Orphan Asylum Society, 9 Cowen, 463. The only objection urged in argument to this is, that it would tend to divest vested rights. The principle as here laid down has no such tendency, because it is restricted to the laws in force at the time the charter is enacted. But corporations are likewise subject to subsequent legislative action. "A State law may be retrospective in its charter, and may divest vested rights, and yet not violate the constitution, unless it also impairs the obligation of the contract." Charles River Bridge vs. Western Bridge 11 Pet., 420; Angell & Ames, 142.

Indeed the argument for the defendant in error is founded upon the assumption, that this corporation is subject to the general law of the land, for it demands the application of a common law principle to this contract, in order to make it void. The common law can only be in force, in this State, to the extent that it remains unchanged by statute; the common law rule against usury, at the time of the enactment of this bank charter, was so far modified, that the contract was only avoided as to the interest. The common law rule making the contract wholly void, was to this extent repealed by necessary implication; how then can its principle be invoked to operate on the contract?

By the words of the charter as above set forth, the bank, in regard to loans for twelve months, is not restrained by express words from taking more than 8 per cent.; there is neither any prohibition by way of penalty—it follows that there is no restriction at all unless it be an implied one, or unless we apply the general statute of interest to this bank. This would be right, and if the bank has contracted for more interest than is allowed by its charter it can only recover the principal sum lent.

The case most strongly urged against this conclusion, is that of the bank of the United States vs. Owen, 2 Peters, 527. It has been pressed upon us with so much earnestness in support of the position, that the contract if infected with usury is utterly void, that we feel it a duty to examine it, and show why we cannot concur in it. The first step in this process is to ascertain precisely what was in question, and what was decided in that case upon this point. In reference to this matter the court itself says:—"The question here has relation exclusively to the legal effect of a violation of the provision *in the charter* on the subject of interest; and does not bring in question the operation of the statute of usury of Kentucky upon the validity of the contract. To understand the gist of the question, it is necessary to observe, that although the act of incorporation forbids the taking of more than six per cent., it does not declare void any contract reserving a greater sum than is permitted. Most, if not all the acts passed in England and in the States on the same subject, declare such contracts usurious and void.

"The question then is, whether such contracts are void in law, upon general principles. The answer would seem to be plain and obvious, that no court of justice can in its nature be made the handmaid of iniquity. Courts are instituted to carry into effect the laws of the country, how can they then become auxiliary to the consumation of violations of law!" The length of this extract will be excused, because it is necessary to the distinct understanding of the decision.

Here it is expressly stated that the decision is to turn alone upon the construction of the charter of that bank, without reference to the bearing of any general statute upon the subject of interest. Why it was so considered does not appear; perhaps it was because the court *then* thought there was no general statute which could bear upon it, or which would vary the result. The same court had previously decided in more than one instance, that the Bank of the United States was governed by Congress alone, and was subject to no other legislation. McCullough vs State of Maryland 4 Wh: 9 Wh. 859. Now there was no act of Congress other than the charter on the subject of interest, which could bear on the point, and the court in the outset disclaims any reference to the act of Kentucky, and confines its attention exclusively to the charter. We shall see in the further progress of this opinion, that its course has not been uniform on this point. The words of the charter are "nor shall said bank take more than at the rate of six per cent per annum, for or upon its loans or discounts." By the demurrer it was admitted that the bank had "unlawfully, usuriously, and corruptly" stipulated for more than the legal rate of interest. And the court decided that the contract was void upon general principles; "and that there could be no legal remedy for that which is itself illegal." With this general conclusion we have no concern; I shall proceed to point out the difference between the case and the one before this court. First, the charter of the Commercial Bank of Manchester does not in terms declare, that it shall not take more than *eight* per cent discount; the inference that the taking of more is prohibited, is mere deduction unless it be drawn from the general statute of this State on the subject of interest. Next, there is no act of Congress which permitted a recovery of the principal sum lent, where there had been usury, and the case was left to the general common law doctrine. Had there been an act of Congress similar to our statute, we believe a different decision would have been made, else why do they so carefully say that they cannot consider of the effect of the statute of Kentucky.

But there is still stronger evidence on this point. The case of the Bank vs Owens in 2 Peters came up on a certificate of division of opinion of the judges of the Circuit Court; —when the cause was remanded, the demurrer was withdrawn and replications filed, a jury, verdict—judgement for defendant and another appeal. The case of the Bank of the United States vs Waginer et al 9 Peters. 378, is the same case and between the same parties, the order of names only being reversed with that of the Bank vs Owens in 2d Peters. In delivering its opinion in the case in 9th Peters, it will be seen that the court departs from the course pursued in 2d Peters and takes the usuary act of Kentucky into its consideration. It says, "it is in reference to the usury act of Kentucky, and this article of the bank charter, that the various instructions asked or given are to be examined."

The rule of construction adopted in reference to the usury laws, is there stated.

They treat the question throughout as one which is influenced by the statute of usury, apply the same rules of construction, and under this view of the subject, they again reverse the case and send it back with instructions strongly calculated to insure recovery on the part of the bank. Hence it seems that the court receded from the position taken in the case of Owens, that it was to be considered without reference to the general law of usury, and took a broader and juster view.

But to test still further the claims which that case has on our regard, as authority; let us look to what the same court said on a previous occasion, as to the invalidity of a contract on the ground of usury. In the case of D. Wolfe, Johnson, 10th Wheaton, they say, "under a law which forbids the taking usurious interest, but does not avoid the securities, a court of equity will not refuse its aid to recover the principal." Why should a court of law, under precisely the same circumstances, refuse to *become the handmaid of iniquity*, in the language of the case of Owens, and turn the party from its door. A court of equity is usually esteemed purer than any other tribunal, and much more rigorous in excluding claims on the score of iniquity than a court of law.

Again in the case of Lloyd vs Scott, 4th Peters, 205, the same court says, "that usury is now only considered an illegal or immoral act, because it is prohibited by law." From this it follows inevitably that the measure of its illegality is, the extent of the prohibition law; and as in this State, there is no forfeiture by statute, except of the interest, the party has a clear right to recover the principal. Once more—in the case of Flickner vs the Bank of the United States, 8th Wh., the court says: "The statutes of the States, as well as of England, contain an express provision, that usurious contracts shall be utterly void; and without such an enactment, the contract would be valid, at least in respect to persons who were strangers to the usury. The taking of the interest by the bank beyond the sum authorized by the charter, would be a violation, for which a remedy might be applied by the government; but as the act of Congress does